

DIRK KEMPTHORNE  
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DIRECTOR

STATE OF IDAHO  
DEPARTMENT OF FINANCE  
700 W. STATE STREET, 2ND FLOOR  
P.O. BOX 83720  
BOISE, IDAHO 83720-0031  
Website: finance.state.id.us

September 6, 2001

Re: [REDACTED]

Dear Ms. [REDACTED]

This is in response to your letter requesting that the Department take a "no-action" position in accepting a late filing [REDACTED] pursuant to Section 30-1434(1)(k) of the Idaho Securities Act (the Act).

It is our understanding that [REDACTED] (the Company) granted options under a 1997 Stock Option Plan (the Plan) to employees, non-employee directors, consultants, and others.

Section 30-1434(1)(k) exempts:

"Any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing or similar benefit plan."

This exemption is not applicable to non-employees such as consultants of the Company. In our opinion, any distribution of shares or options to the Idaho employees of a parent corporation, or a subsidiary corporation that is not wholly owned by the Company, would also be a violation of Section 30-1434(1)(k).

Based on your representations, the Department is willing to take a "no-action" position in accepting the late filing by [REDACTED] pursuant to Section 30-1434(1)(k). However, this "no-action" will in no way extinguish the Company's civil liability to the individuals previously granted options pursuant to the Plan. In our opinion, in order to extinguish this liability, the only remedies available to the Company are: 1) finding an applicable self-executing exemption on which to rely for options granted prior to this filing, or 2) offering rescission to all plan participants. Please refer to §30-1446 of the Act (enclosed) for information regarding rescission offers.

Please be aware that the position taken in this letter is based solely on the facts and circumstances presented your letter dated August 15, 2001. Should the facts change or be altered in a material way, our view may be different.

If you have any questions regarding this matter, please contact the undersigned.

Sincerely,

*Nancy C. Ax*  
Nancy C. Ax  
Securities Analyst

Enclosure

Banks & Savings Banks (208) 332-8005  
Credit Unions (208) 332-8003  
Securities (208) 332-8004  
Money Transmitters (208) 332-8004

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Supporting Services (208) 332-8001  
Mortgage Companies (208) 332-8002  
Finance Companies (208) 332-8002  
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